

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 11-55
)	
FREDERICK DEVON JACKSON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER OF COURT

Presently before the court is a motion for appointment of counsel with respect to a motion for retroactive application of sentencing guidelines to a crack cocaine offense pursuant to 18 U.S.C. § 3582 (ECF No. 16), filed by defendant Frederick Devon Jackson (“defendant”). For the reason set forth below, defendant’s motion will be DENIED.

As a preliminary matter, defendant does not have a constitutional right or a statutory right to appointment of counsel in a proceeding pursuant to § 3582. United States v. Reddick, 53 F.3d 462, 464-65 (2d Cir. 1995) (finding no constitutional right to counsel or right to counsel pursuant to 18 U.S.C. § 3006A in § 3582 proceedings); accord United States v. Hart, 331 F. App’x 972 (3d Cir. 2009) (citing United States v. Forman, 553 F.3d 585, 590 (7th Cir. 2009)). Therefore, to the extent that defendant seeks to have counsel appointed as of right for purposes of his motion, the motion will be DENIED.

In any event, even if counsel were to be appointed, the court finds that defendant’s motion lacks merit because as set forth in the government’s brief, defendant’s career offender status makes retroactive relief unavailable. (ECF No. 17) (citing, *inter alia*, United States v. Mateo, 560 F.3d 152, 153-55 (3d Cir. 2009) (holding that where a defendant is sentenced as a career offender pursuant to U.S. SENTENCING GUIDELINES MANUAL § 4B1.1, the defendant is not

eligible for a sentence reduction pursuant to § 3582 because the offender's "base offense level was determined by § 4B1.1, not § 2D1.1").

Therefore, for the reason set forth above, defendant's motion is DENIED.

By the court:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

Date: December 19, 2012

cc. Fredrick D. Jackson
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